the view that they took was not a perfectly permissible one. Not only, in our opinion, was the case of the appellant eminently distinguishable from that of his two co-accused but on the material before them the Jury could hardly have come to any other conclusion but that the appellant was guilty of the offence with which he was charged.

It only remain to refer to the final point taken by learned counsel for the appellant namely that there should have been a special verdict.

Not only would such a course have been contrary to the practice but in the present matter, as we have already pointed out, the verdicts of the Jury as against the three accused were perfectly explicable and in no way perverse.

It was for these reasons that we stated at the conclusion of the hearing of the appeal that the appeal must be dismissed and the conviction affirmed.

Appeal dismissed.

Solicitors: *Hilborne & Co.*

REG. v. STRAITS TIMES PRESS (MALAYA) LTD. & ANOR.

[A. Cr. J. (Rose C.J.) March 9, 1960]

[Singapore — Mag. Appeal No. 179 - 180 of 1959]

Criminal Law — Defamation — Election speech — Newspaper report concerning prejudicial statements during election campaigns — "Height of dishonesty" — Whether defamatory under s.499 Penal Code.

The respondent were charged as follows: "You are charged that you (1) Straits Times Press (Malaya) Ltd. being the publishers of a newspaper known as the Straits Times and (2) L. C. Hoffman being the Editor-in-Chief of the said newspaper did on the 10th day of May 1959 publish in the said newspaper of and concerning David Saul Marshall some matter, to wit, 'He (Tun Lim) said it was Mr. Marshall who suggested that the chairman should be Dr. Chuang Chu Lin. "His friends went to see Dr. Chuang and now he said it was I who was trying to get Dr. Chuang to join us. That is the height of dishonesty." Tun Lim said knowing or having reason to believe that the same was defamatory and you thereby committed an offence punishable under section 500 of the Penal Code."

This was an appeal from the District Judge who acquitted the respondents on the ground that they had established a case under Exceptions 3 and 6 of section 499 of the Penal Code.

The appellant contended that the learned District Judge was premature in acquitting the accused and asked that the matter should be remitted for completion and determination according to law.

Held: (1) that the dishonesty referred to was not financial but political. In the context of the newspaper report, the accusation of dishonesty meant no more than the height of disingenuousness;

(2) there is no reason to believe and no ground for supposing that the newspaper report was inaccurate or compiled without due care and attention; nor is there anything in the circumstances of the matter to rebut the presumption of good faith;

(3) in the events, there was therefore no injustice from the action of the learned District Judge in acquitting the accused without calling upon their defence, as the prosecution case itself disclosed a situation from which it may reasonably be inferred that the relevant exceptions to section 499 of the Penal Code were applicable.

MAGISTRATE'S APPEAL.

Denis Murphy (*J. E. Lloyd* with him) for the appellant.

T. E. Atkinson (*T. H. A. Potts* with him) for the respondents.

Rose C.J.: The two respondents were charged as follows:—

> You are charged that you (1) Straits Times Press (Malaya) Ltd. being the publishers of a newspaper known as the Straits Times and (2) L. C. Hoffman being the Editor-in-Chief of the said newspaper did on the 16th day of May 1959 publish in the said newspaper of and concerning David Saul Marshall some matter, to wit,
>
> "He (Tun Lim) said it was Mr. Marshall who suggested that the chairman should be Dr. Chuang Chu Lin. 'His friends went to see Dr. Chuang and now he said that it was I who was trying to get Dr. Chuang to join us. That is the height of dishonesty'. Tun Lim said."
>
> knowing or having reason to believe that the same was defamatory and you thereby committed an offence punishable under section 500 of the Penal Code.

The learned District Judge held that the respondents had established a case under Exceptions 3 and 6 of section 499 of the Penal Code (Chapter 119) and acquitted them.

It appears to be common ground that the facts relating to the episode in question were that the complainant, Mr. David Marshall, and the then Chief Minister, Tun Lim Yew Hock, were, amongst others, anxious to form a common front against the People's Action Party and in pursuance of this aim a meeting was held in the vaults of a bank — secrecy being deemed to be prudent — at which the question of the chairmanship of the proposed new party was discussed.

According to the evidence of the complainant himself, it was his own suggestion that a certain Dr. Chuang should be the chairman of the new party. Tun Lim Yew Hock was not, at first, in favour of this suggestion, in view, presumably, of the fact that Dr. Chuang had been under detention on political grounds and had only recently been released. Upon the complainant insisting, however, Tun Lim Yew Hock, anxious that the negotiations for a united front should not be imperilled, gave way; and it was agreed that a go-between should visit Dr. Chuang and issue a joint invitation. In the event Dr. Chuang declined the office and the matter came to nothing.

It was in reference to this matter that the complainant made a speech to his political supporters at Monk's Hill on Thursday the 14th of May 1959. A copy of the speech was issued to the Press and became Exhibit P 5 in the proceedings in the Court below.

An accurate verbatim report of the relevant passage in the speech appeared in the *Straits Times* of Saturday, May 16th 1959, and reads as follows:—

Referring to Tun Lim at his rally, Mr. Marshall said: "This curious man once put Dr. Chuang Chu-Lin in gaol — one of the most prominent leaders of Chinese education.

"He was detained for almost a year and released last year, and I know this for a fact that when he was released, Tun Lim asked Dr. Chuang to be the chairman of the new party he was forming, now known as SPA."

He asked: "If Dr. Chuang was a subversive, how could the Chief Minister ask him to be the chairman of his new political party?

"If Dr. Chuang was not a subversive, how is it that he was detained? Has such conduct any relevance to logic or decency?"

The same newspaper item, a few lines lower down stated as follows:—

Tun Lim agreed that in his effort to form a united front he went to see Mr. Marshall, but Mr. Marshall wanted to know who was going to be president of the organising committee.

He said it was Mr. Marshall who suggested that the chairman should be Dr. Chuang Chu-Lin.

"His friends went to see Dr. Chuang and now he said that it was I who was trying to get Dr. Chuang to join us. That is the height of dishonesty." Tun Lim said.

No evidence was adduced in the Court below to disprove that this passage in the newspaper accurately summarised what Tun Lim Yew Hock had said; and I see no reason to assume that it did not.

Section 499 of the Penal Code reads as follows:—

"Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or have reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

The third and sixth exceptions, which the learned District Judge regarded as applicable, read as follows:—

"Third Exception. — It is not defamation to express in good faith any opinion whatever respecting the conduct, of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Sixth Exception. — It is not defamation to express in good faith any opinion respecting the merits of any performance with its author has submitted to the judgment of the public, or respecting the character appears in such performance, and no further."

The learned District Judge considered that the complainant's speech, a copy of which was submitted to the Press, was a "performance" within the meaning of the exception.

At the foot of the Explanations and Illustrations set out after the section appears an "Explanation to Exceptions" which states that in proving the existence of circumstances as a defence under, *inter alia*, the third and sixth exceptions, good faith shall be presumed unless the contrary appears.

Learned counsel for the appellant contends that the learned District Judge was premature in acquitting the accused and asks that the matter should be remitted for completion and determination according to law.

It is now necessary to examine what actually is the libel complained of.

It is suggested that the statement that "his (the complaint's) friends went to see Dr. Chuang" is incorrect in that in fact the chosen go-between was not a special friend of the complainant; and that that mis-statement of fact adds sting to the subsequent phrase "that is the height of dishonesty".

It seems to me to be abundantly clear in this context that the dishonesty referred to is not financial but political. The question therefore arises whether, in the heat of an election campaign, the allegation that an opponent has been guilty of political dishonesty can reasonably be held to fall within the scope of the criminal law at all. In the context of the newspaper report, the accusation of dishonesty surely means no more — and would convey no more to the average reader — than that the complainant's description of the circumstances attaching to the invitation to Dr. Chuang was disingenuous; or, to adopt the formula used, the height of disingenuousness.

It may well be that the same charge of disingenuousness could be made in respect of the statement attributed to Tun Lim Yew Hock, that the complainant's friends went to see Dr. Chuang, when it was in fact a mutually selected and uncommitted go-between who went. But is there anything defamatory, within the ambit of the criminal law, in describing either of these accounts of the Dr. Chuang episode as disingenuous ?

The point of the complainant's attack upon his opponent would have been much blunted if he had explained that Tun Lim's decision to sponsor the invitation to Dr. Chuang was only made under pressure from the complainant himself. He could still, no doubt, have made the point that Tun Lim should not have yielded to the pressure in view of the personal inconsistency involved on account of Dr. Chuang's previous detention, but surely, as he elected to suppress the element of coercion in Tun Lim's decision to invite Dr. Chuang, he is hypersensitive if he takes exception to his account being described as disingenuous.

It would seem from the agreed facts of the episode that both the complainant's description of it and that attributed to Tun Lim Yew Hock are what is colloquially described as half-truths. In the heat of an election campaign a speaker may perhaps be forgiven for indulging in a half-truth at the expense of an opponent, but if he does so he surely cannot reasonably complain if his statement is stigmatised as disingenuous; and, as I have already said, I do not consider that in this context any reasonable person would interpret the words "height of dishonesty" as meaning anything more than the height of disingenuousness".

Paying due regard to the complainant's ruffled feelings, the matter seems to me to be a storm in a tea cup. Further, there is no reason to believe and no ground for supposing that the

newspaper report was inaccurate or compiled without due care and attention; nor is there anything in the circumstances of the matter to rebut the presumption of good faith.

In my opinion no injustice has resulted from the action of the learned District Judge in acquitting the accused without calling upon their defence, in that it would seem that he appears to have formed the view, with which I am not disposed to disagree, that the record of the prosecution case itself discloses a situation from which it may reasonably be inferred that the relevant exceptions to section 499 of the Penal Code are applicable.

The appeal must therefore be dismissed and the order of acquittal affirmed.

Appeal dismissed.

Solicitors: *Drew & Napier; Sisson & Delay.*

SURINDER SINGH KANDA v. THE GOVERNMENT OF THE FEDERATION OF MALAYA

[O. C. J. (Rigby J.) March 24, 1960]

[Penang — Civil Suit No. 232 of 1959]

Constitutional Law — Constitution of the Federation of Malaya, arts. 135(1), 144(1) and 162(1) — Police Service Commission.

Police — Superior Police Officer — Dismissal by Commissioner — Whether power of Commissioner under Police Ordinance, 1952 impliedly repealed by art. 144 of the Federation Constitution.

Legislation — "Modification" — Repeal by implication — Federation Constitution, Art. 162(1), (6) and (7).

The plaintiff claimed a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by the Commissioner of Police on July 7, 1958, was void, inoperative and of no effect and that he was still a member of the said Police Force. He further asked for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

The plaintiff based his claim on two grounds: (1) by virtue of the Federation Constitution the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission; (2) even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable opportunity of being heard before the order of dismissal was made against him.

Held: (1) the words "Subject to the provisions of any existing law and to the provisions of this Constitution" in Art. 144(1) of the Federation Constitution repeal the powers previously vested in the Commissioner of Police under the Police Ordinance, 1952, "to appoint, confirm, promote and dismiss superior police officers" and place such powers in the hands of the Police Service Commission. At the time of the plaintiff's dismissal, the power to appoint and dismiss was vested in the Police Service Commission by virtue of Art. 144(1) (read in conjunction with Art. 135(1)) of the Constitution.

(2) by virtue of Article 135(2) of the Constitution the plaintiff could not be dismissed without being given a reasonable opportunity of being heard;

(3) the Court had jurisdiction to entertain these proceedings in the present form, i.e. to grant the plaintiff the order of declaration asked for;

(4) accordingly there must be a declaration for the plaintiff in the terms as prayed, and an account must be taken of the moneys due to the plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from July 7, 1958.

Cases referred to:—

(1) *High Commissioner for India* v. *I. M. Lall* A.I.R. 1948 (35) P.C. 121.

(2) *R.* v. *Queen's County J.J.* [1908] 2 Ir. R. 285 at 294.

(3) *N.W.F. Province* v. *Suraj Narain* A.I.R. 1949 (36) P.C. 113.

(4) *Cooper* v. *Wilson* [1937] 2 K.B. 309.

(5) *Bernard & Ors.* v. *National Dock Labour Board & Anor.* [1953] 1 All E.R. 1113.

(6) *Healey* v. *Minister of Health* [1955] 1 Q.B. 221.

ACTION.

Mr. Jag-Jit Singh for plaintiff.

Mr. L. A. Massie (Senior Federal Counsel) for defendants.

Rigby J.: In this action the plaintiff claims a declaration that his dismissal from the Federation of Malaya Police Force purported to be effected by one, Mr. W. L. R. Carbonell, the then Commissioner of Police of the Federation of Malaya, on the 7th day of July, 1958, was void, inoperative and of no effect and that he is still a member of the said Police Force. He further asks for orders directing that an account be taken of the salary and emoluments due to him as from the date of his allegedly invalid dismissal and the payment to him of the amounts found to be due.

2. The plaintiff bases his claim on two grounds, one a matter of law, and the other of mixed law and fact. First, he contended that, as a matter of law, by virtue of the Federal Constitution which became the supreme law of the Federation of Malaya as from the 31st day of August, 1957, the powers of appointment and dismissal of Superior Police Officers were no longer vested in the Commissioner of Police but had become vested in the Police Service Commission. Secondly, he contended that even if the power of dismissal was still vested in the Commissioner of Police his dismissal was invalid in that he was deprived of the fundamental right of being given a reasonable opportunity of being heard before the order of dismissal was made against him. It will be convenient to deal with these two submissions in the order in which they have been raised.

3. The plaintiff joined the Federation of Malaya Police Force on the 1st day of March, 1951, as a Probationary Asian Inspector. On the 31st day of August, 1951, by a Certificate of Appointment, he was appointed a Superior Police Officer in the rank of Probationary Inspector. On the 1st day of June, 1953, he was confirmed in the substantive rank of Police Inspector and placed on the pensionable establishment. On the 7th day of July, 1958, for reasons to which I will later have to refer, the then Commissioner of Police ordered his dismissal from the Police Force.